IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.5222 of 2006
to
FIRST APPEAL No.5240 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
SHANKERBHAI DHARAMSHIBHAI & 1 - Defendant(s)

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Appearance :
MR KRUNAL D. PANDYA, AGP for Appellant(s) : 1 - 2.
MR AJ PATEL for Respondent(s)-Claimant(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/01/2007

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these Appeals filed under Section 54 of the Land Acquisition Act, 1894, (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of the common judgment and award dated September 17, 2005, rendered by the learned Special Judge, Narmada Yojana, Ahmedabad (Rural), in Land Acquisition Case Nos.443 of 1999 to 461 of 1999, by which the claimants have been awarded additional amount of compensation at the rate of Rs.26/- per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.80 ps. per sq.mt. for irrigated lands and Rs.1.20 ps. per sq.mt. for non irrigated lands by his award dated December 30, 1998.

2. The Executive Engineer, Narmada Project, Canal Division No.4/5, Mehsana, proposed to the State Government to acquire the lands of village Vanpardi, Taluka: Viramgam, District:

Ahmedabad, for the public purpose of construction of Zinzuwada Branch Canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Vanpardi, which were specified in the proposal of the Executive Engineer, were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on November 26, 1996. The land owners were thereafter served with notices as required by Section 4(1) of the Act. On receipt of notices, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report as contemplated by Section 5-A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Vanpardi which were specified in the notification published under Section 4(1) of the Act were needed for the

public purpose of construction of Zinzuwada Branch Canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on September 9, 1997. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated December 30, 1998, offered compensation to the claimants at the rate of Rs.1.80 ps. per sq.mt. for irrigated lands and Rs.1.20 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition

Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.443 of 1999 to 461 of 1999.

3. On behalf of the claimants, witness Shankarbhai Dharamsinhbhai Patel was examined at Ex.38. The witness mentioned in his testimony that the lands acquired were highly fertile and as the water was available for irrigation, each claimant was able to raise crops in different seasons. According to the said witness, after deducting the cost of cultivation, each claimant was able to earn the net income of Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces such as Cumin-Seeds, Cotton, Juwar, Millet, Wheat, etc. which were being sold at Becharaji, Kadi, Katosan, Mandal and Unjha. The witness claimed before

the Court that the boundary of village Nayakpura was touching the boundary of his village and that earlier, lands were acquired from village Nayakpura for the purpose of construction of canal under the Narmada Project. What was asserted by the witness was that the lands which were acquired from village Nayakpura were similar in all respects including fertility to the lands acquired in the instant case and that similar crops were being raised on the lands. This witness was cross-examined on behalf of the acquiring authorities. However, nothing substantial could be elicited during his cross-examination. The assertion made by the witness that the lands which were acquired from village Nayakpura were similar in all respects to the lands acquired in the instant case could not be demonstrated to be untrue.

4. On behalf of the acquiring authorities, witness Dashrathbhai Mafatbhai Patel, who was then discharging duties as Deputy Executive

Engineer, was examined at Ex.44. The witness mentioned in his evidence that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired in the instant case and therefore, the claimants were not entitled to enhanced compensation. In cross-examination by the learned advocate for the claimants, it was mentioned by the witness that the boundaries of village Nayakpura and village Vanpardi were touching each other.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the award of the Reference Court relating to the lands of village Nayakpura, which was produced at Ex.37, furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. On the basis of the said award, the Reference Court has awarded additional amount of compensation to the

claimants by impugned award, giving rise to the above-numbered Appeals.

6. This Court has heard Mr.Krunal D.Pandya, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimant/ claimants in each Appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is true that the witness for the claimants could not make his assertion good that each claimant was earning the net income of Rs.30,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces. However, there is no manner of doubt that the lands acquired in the instant case were irrigated lands and that different crops were being raised thereon. This becomes quite evident if one peruses the contents of Village Form No.7/12 produced by the witness

for the claimants at Ex.14 to Ex.35. The record does not indicate that enhanced compensation was claimed by the claimants on the basis of comparable sale instances nor the record indicates that enhanced compensation was claimed on yield basis. In support of higher rate of compensation, the claimants had relied upon two previous awards of the Reference Court relating to the lands of village Nayakpura. The first award which was produced at Ex.36 indicates that the lands of village Nayakpura, Taluka: Viramgam, District: Ahmedabad, were acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 13, 1991. Therein, the Special Land Acquisition Officer, by his award dated June 13, 1996, had offered compensation to the claimants at the rate of Rs.1.35 ps. per sq.mt. for irrigated lands and Rs.0.90 ps. per sq.mt. for non-irrigated lands. Feeling

aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case No.760/1998 with Land Acquisition Case Nos.766/1998 to 778/1998. In those cases, on behalf of the claimants, witness Vitthalbhai Chaturbhai Patel was examined at Ex.80 whereas on behalf of the acquiring authorities, witness Kanaiyalal Atmaram Patel was examined at Ex.32. On appreciation of evidence adduced by the parties, the Reference Court, by judgment and award dated September 30, 2004, awarded additional amount of compensation to the claimants at the rate of Rs.19.10 ps. per sq.mt. Again, another award of village Nayakpura, which was produced at Ex.37 indicates that the lands of village Nayakpura, Taluka: Viramgam, District: Ahmedabad, were acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of

notification issued under Section 4(1) of the Act in the official gazette on December 9, 1997. Therein, the Special Land Acquisition Officer, by his award dated June 16, 1999, had offered compensation to the claimants at the rate of Rs.2.25 ps. per sq.mt. for irrigated lands and Rs.1.50 ps. per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case No.201/2001 to 210/2001. On appreciation of evidence adduced by the parties, the Reference Court, by judgment and award dated January 24, 2005, awarded additional amount of compensation to the claimants at the rate of Rs.28.60 ps. per sq.mt.

8. As noticed earlier, the Reference Court has relied upon Ex.37. However, on re-appreciation of evidence adduced by the parties, this Court is of the opinion that

Ex.37, which is an award of the Reference Court relating to the lands of village Nayakpura, could not have been relied upon as in the instant case, notification under Section 4(1) of the Act was published in the official gazette on November 26, 1996, whereas with reference to award produced at Ex.37, notification issued under Section 4(1) of the Act was published in the official gazette on December 9, 1997. When award relating to the lands of village Nayakpura which were acquired pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 13, 1992, is available on the record of the case, the Reference Court was not justified in placing reliance upon Ex.37 for the purpose of determining the market value of the lands acquired in the instant case. Thus, Ex.37 will have to be discarded for the purpose of determining the market value of the lands acquired in the instant case. It is agreed between the learned counsels for the

parties that on the basis of Ex.36, the claimants would be entitled to compensation in all at the rate of Rs.23.80 ps. per sq.mt. for their acquired lands, which figure is rounded of to Rs.24/- per sq.mt. for the purpose of convenience, because in First Appeals No.5093/2006 to 5106/2006, directed against Ex.36, decided on December 20, 2006, the High Court held that the claimants, whose lands were acquired from village Nayakpura, were entitled to compensation at the rate of Rs.17/- per sq.mt.

9. It is well-settled that the previous award of the Reference Court relating to the lands of a village which has attained finality can be relied upon for the purpose of determining the market value of similar lands acquired from the adjoining village. As observed earlier, the assertion made by the witness for the claimants the lands which were previously acquired from village Nayakpura were similar in all respects, including

fertility, to the lands acquired in the instant case could not be demonstrated to be untrue. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of village Nayakpura for the purpose of determining the market value of the lands acquired in the instant case. Under the circumstances, the contention of the learned Assistant Government Pleader for the appellants that the award of the Special Land Acquisition officer should be restored cannot be accepted. However, as the claimants are entitled to compensation at the rate of Rs.24/- per sq.mt., the Appeals will have to be allowed in part.

10. For the foregoing reasons, all the Appeals partly succeed. The judgment and award dated September 17, 2005, rendered by the learned Special Judge, Narmada Yojana, Ahmedabad (Rural), in Land Acquisition Case Nos.443 of

1999 to 461 of 1999, awarding additional amount of compensation to the claimants at the rate of Rs.26/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer vide award dated December 30, 1998, at the rate of Rs.1.80 ps. per sq.mt. for irrigated lands and Rs.1.20 ps. per sq.mt. for non irrigated lands, is hereby modified, and it is held that the claimants, in all, would be entitled to compensation at the rate of Rs.24/- per sq.mt. for their acquired lands. The other benefits which have been conferred upon the claimants by the impugned award are not interfered with at all and are hereby confirmed. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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